

UNITED STATES COURT OF APPEALS

OCT 30 2000

TENTH CIRCUIT

PATRICK FISHER
Clerk

FRANK RICHARD MARQUEZ,

Petitioner-Appellant,

v.

JOE WILLIAMS, Warden, Lea County
Correctional Facility; GARY JOHNSON,
Governor, State of New Mexico; ROBERT
PERRY, Secretary of Corrections; NEW
MEXICO CORRECTIONS DEPARTMENT,
State of New Mexico; WACKENHUT
CORRECTIONS CORPORATION, a Florida
corporation; LEA COUNTY, NEW MEXICO;
ATTORNEY GENERAL FOR THE STATE
OF NEW MEXICO,

Respondents-Appellees.

No. 00-2141
(D. N.M.)
(D.Ct. No. CIV-00-205-MV)

ORDER AND JUDGMENT*

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined

* This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant Frank Marquez, a state inmate appearing *pro se*, appeals the district court's decision denying his habeas corpus petition filed under 28 U.S.C. § 2241 for failure to exhaust existing state remedies. The facts and issues in this case are identical to those in *Rael v. Williams*, 2000 WL 1051845 (10th Cir. July 31, 2000), *petition for cert. filed*, (U.S. Oct. 10, 2000) (No. 00-6587). Thus, our decision is governed by this court's analysis and conclusions therein.

Accordingly, we grant Mr. Marquez a certificate of appealability and **AFFIRM** the judgment of the district court, as modified, to dismiss the claim cognizable under 28 U.S.C. § 2241 with prejudice; all other claims contained in Mr. Marquez's petition are dismissed without prejudice.

Entered by the Court:

WADE BRORBY
United States Circuit Judge